

The Marshik-Geurts *et al.* application is not available as prior art under 35 U.S.C. 103(a) because: 1) the claimed invention was conceived and reduced to practice prior to the February 5, 2004 publication date of the Marshik-Geurts *et al.* application; and 2) at the time the present invention was made, it was subject to an obligation of assignment to the same entity as the Marshik-Geurts *et al.* applicaion.

In more detail the attached Rule 131 Declaration (Tan_Declaration) establishes that the invention was conceived and reduced to practice before February 5, 2004 and that the inventor was under a duty of assignment to InfraReDx, Inc.

The attached assignment (20040024298A1_assignment) establishes that the Marshik-Geurts *et al.* application was also assigned to InfraReDx, Inc.

Thus, pursuant to 35 USC 103(c)(1), subsections (e)-(g) of section 102 are not available. And, the Marshik-Geurts *et al.* application does not meet the criteria of subsections (a)-(d) of section 102.

For these reasons, the claims are deemed patentably distinguishable over the applied references.

It is believed that the present application is in condition for allowance. A Notice of Allowance is respectfully solicited. Should any questions arise, the Examiner is encouraged to contact the undersigned.

Respectfully submitted,

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